REMARKS

Claims 57, 60-64, and 146-157 stand rejected. Claims 146-151 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement and under 35 U.S.C. § 101. Claims 57, 60, 146-147, 152-153 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Pat. No. 5,619,247 ("Russo") in view of U.S. Pat. No. 5,734,720 ("Salganicoff"). Claims 61-63, 148-150, and 154-156 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Russo and Salganicoff in view of WO 92/22983 ("Browne"). Claims 61, 64, 146, 151, 154 and 157 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Russo and Salganicoff in view of U.S. Pub. No. 2002/0056112 ("Dureau").

Claim 57 has been amended to include recitations from former claim 60. Claim 60 has been cancelled. Claim 152 has been amended to include recitations from former claim 153. Claim 153 has been cancelled. Claims 146-151 have been cancelled.

Claim Rejections 35 U.S.C. § 112 and § 101

Claims 146-161, which stand rejected under 35 U.S.C. § 112 and 35 U.S.C § 101, have been cancelled.

Claim Rejections – 35 U.S.C. § 103(a)

Claims 57, 60, 146-147, 152-153 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Pat. No. 5,619,247 ("Russo") in view of U.S. Pat. No. 5,734,720 ("Salganicoff").

Claim 57 has been amended to incorporate recitations of claim 60. Claim 60 has been cancelled. The arguments presented here address Examiner's remarks with respect to the rejection of claim 60 and in particular to recitations of the former claim 60 that are now found in claim 57. Claim 57, as amended, recites in part:

> receiving a blanket transmission of classification information in a header of at least some of the digital data content;
>
> comparing the classification information to preference information associated with the first viewer;
>
> automatically selecting digital data content for storage from the digital data content having a predetermined degree of similarity

> between the classification information and the preference information;

As the Examiner admits, "Russo is silent on the classification information being in the header." The Examiner has not asserted that Salganicoff teaches or suggests classification information in a header. The Examiner wrote:

> Official Notice is taken that indirect classification information being in the header is well known such as using classification identifying PIDs of an MPEG stream, wherein the PIDs by definition of MPEG is located in the header."

(Office Action of 12/26/07, pp. 5-6.) Applicant respectfully submits that the above quoted recitations were not well known or conventional in the art or obvious.

Applicant respectfully points out that pursuant to M.P.E.P. § 2144.03(A), the Examiner cannot remedy the deficiency as noted above in the teaching of the Russo reference merely by asserting what is "well known" in the art; rather, the Patent Office must demonstrate all claim limitations based on substantial evidentiary support. See *In re Zurko*, 59 U.S.P.Q.2d 1693, 1697 (Fed. Cir. 2001). For example, the cited section of the M.P.E.P. states (emphasis added):

> Office notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in In re Ahlert, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "**capable of such instant and unquestionable demonstration as to defy dispute**" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).
>
> ...
>
> It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.

Applicant submits that this proof is not found in the conclusory rejection made by the Examiner, and thus the Examiner's use of Official Notice is improper. Applicant reminds the Examiner that the Administrative Procedure Act requires that the Examiner's rejections employ "reasoned decision making" based on evidence from a fully developed administrative

record. See *In re Lee*, 61 U.S.P.Q.2d 1430, 1433 (Fed. Cir. 2002). Patentability determinations which are based on what the Examiner believes is "basic knowledge" and "common", and that otherwise lack substantial evidentiary support, are impermissible. See *In re Zurko*, 59 U.S.P.Q.2d 1693, 1697 (Fed. Cir. 2001).

Therefore, Applicant respectfully traverses the rejection of claim 57 on the ground that the aforementioned "Official Notice" lacks "substantial evidentiary support." Thus, the Examiner is asked to produce substantial evidentiary support (e.g., produce a reference) with respect to the subject matter claimed in claim 57, or withdraw the rejection of this claim.

Furthermore, the Examiner's stated example of "PIDs of an MPEG stream" appears to mischaracterize the PIDs. The PIDs of an MPEG stream are described in the ISO/IEC 13818-1 standard as a "unique integer value used to identify elementary streams of a program in a single or multi-program Transport Stream" (International Standard ISO/IEC 13818-1, p.4.) and "a 13-bit field, indicating the type of the data stored in the packet payload" (Id., p. 19.). Applicants contend that a PID that identifies the *type* of data stored in a packet payload (e.g., a PID value of 0x0002 indicates that the packet contains a Transport Stream Description Table; a PID value of 0x1FFF indicates a null packet) can be properly construed so as to teach "classification information in a header" compatible with "comparing the classification information to preference information associated with the first viewer."

For at least the reasons explained above, Applicants respectfully submit that the cited references, either alone or in combination, do not teach the recitations of claim 57 and, therefore, claim 57 is patentably defined over the cited art. Accordingly, Applicants respectfully request that the rejection of claim 57 be withdrawn.

Claim 152 has been amended to incorporate recitations of claim 153. Claim 153 has been cancelled. Claim 152, as amended, recites in part:

> a receiver configured to receive blanket transmission of digital data content wherein at least some of the digital data content has classification information in a header;
>
> a selection subsystem configured to compare the classification information to preference information associated with a first viewer and to automatically select digital data content for storage from the digital data content having a predetermined degree of similarity between the classification information and the preference information;

The reasons explained above with respect to the patentability of claim 57 apply as well to the quoted recitations of claim 152. Accordingly, Applicants respectfully submit that the cited reference does not teach the recitations of claim 152 and, therefore, claim 152 is patentably defined over the cited art. Accordingly, Applicants respectfully request that the rejection of claim 152 be withdrawn.

Claims 61-64 and 154-157 stand rejected under various combinations of Russo, Salganicoff, Browne, and Dureau. **Claims 61-64** each depend, directly or indirectly, from claim 57. **Claims 154-157** each depend, directly or indirectly, from claim 152. Applicants respectfully submit that for at least the reasons explained above with respect to independent claims 57 and 152, these dependent claims are patentably defined over the cited art and, accordingly, respectfully request that the rejection of these claims be withdrawn.

Conclusion

As explained above, Applicants submit that claims 57, 61-64, 152, and 154-157, which are pending and currently stand rejected in the Application, are patentably defined over the cited art. The Examiner is respectfully urged to reconsider the Application. Favorable consideration and passage to issue of the application is earnestly solicited. If the Examiner should, however, find the claims as presented herein are not allowable for any reason or if the Examiner has any questions, comments, or suggestions that would expedite the prosecution of the present case, the Applicants undersigned representative would sincerely welcome a telephone conference at (206) 903-2475.

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/ Kenneth E. Plochinski /
Kenneth E. Plochinski
Registration No. 59,166

Woodcock Washburn LLP
Cira Centre
2929 Arch Street, 12th Floor
Philadelphia, PA 19104-2891
Telephone: (215) 568-3100
Facsimile: (215) 568-3439